was entitled to find that the appellant caused the death of the deceased within the meaning of section 299 of the Penal Code. The first explanation to that section is particularly appropriate to the medical evidence in this case.

The second question raised is that the judge should have found the appellant acted while temporarily insane, due to intoxication. As there was not the slightest evidence of unsoundness of mind apart from intoxication, the appellant could not rely on section 84 of the Penal Code and the appellant relies on the exception created by section 85(2)(b). That section reads as follows:

"(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and —

. . . . . .

(b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission."

This section provides for a defence of temporary insanity due to intoxication, and no objection has been taken to the trial judge applying the same standard of proof as for the usual defence of insanity, namely, that the onus is on the appellant to establish the defence on the balance of probabilities.

I have referred to the evidence to the effect that appellant was able to understand and obey those who escorted him to his house, that he dashed away from them and, after obtaining a parang, appears to have deliberately avoided his escort by dashing out through the back door of his house. There are several further passages in the evidence from victims and others who reasoned with appellant. To one who asked appellant why he was attacking him, appellant replied: "I don't care. I am going to kill everybody. I am a Communist". Appellant chased another man into a house and, from the outside, shouted: "Where is that man just now. Let me slash him to pieces." He went round to the kitchen of the house and called out: "You people come out. Do not bring sticks with you. I am going to slash you to pieces."

There is also evidence that appellant, who was a special policeman, changed into his police uniform after the incident and may have been pretending to be asleep when the police found him.

None of this evidence is disputed. Therefore, while it is clear that accused was behaving in an abnormal manner, the evidence bearing more directly on the question whether the appellant knew that he was doing wrong or whether he was doing (that is, one of the two matters which the onus is on the appellant to establish to bring himself within section 85(2)(b)) is really against the appellant. For he talked about what he intended to do, and he appears to have run away from his escort and to have changed his clothes and may have pretended to be asleep. All of this evidence suggests that he knew what he was doing and knew that this was wrong.

It follows that this court cannot hold that the judge's finding on the second question was unreasonable. It is scarcely possible, in the state of the evidence, to decide, even on a balance of probabilities, in favour of the appellant on these questions.

On the third question, whether the appellant was so drunk that he could not form the intention necessary to constitute the offence of murder, the evidence referred to on the last question is also relevant, especially the actual words he used, to show that he did have a conscious intention. Indeed, the evidence of all those at the scene, except the appellant's own brother, is to the effect that, while accused was drunk, he was not in a highly advanced stage of drunkenness. Much of this evidence must be suspect, because all of the witnesses, except one, admitted they had also been drinking. However, one said that he was not drinking that day because he was the cook. Appellant slashed him and he described appellant as "slightly drunk".

It is clear that, on this evidence, this court will not interfere with the finding of the judge against the appellant on this question of intention.

It follows that all the grounds raised on behalf of the appellant must fail and this appeal must be dismissed and the conviction and sentence confirmed.

Appeal dismissed.

LOO SEONG THYE v. GOH TEIK YAH

[F.C. (Thomson L.P., Wylie C.J. (Borneo) & Tan Ah Tah F.J.) June 1, 1964]

[Penang — Federal Court Civil Appeal No. 24 of 1963]

Landlord and Tenant — Recovery of possession for arrears of rent — Rent paid in excess — Whether excess may be set off against arrears — Relief from forfeiture — Control of Rent Ordinance, 1956, s. 12(1)(e).

Control of Rent Ordinance, 1956, s. 4(1) — Whether payment of annual assessment for rates is a payment within this provision.

These proceedings were commenced by the respondent, the tenant of the premises in question, for $3,600 excess rent paid to the appellant and $2,469.20 for assessment paid on behalf of the appellant from 1948 to 1960 under an agreement made in 1942. The appellant counter-claimed for $1,275 as arrears of rent and sought an order for possession under section 12(1)(a) of the Control of Rent Ordinance claiming that the respondent was in arrears with payment of the rent and that the

tenancy had been terminated by notice to quit. In the High Court judgment was given in favour of the respondent for $2,469.20 on the claim in respect of the assessment together with costs of his claim and in favour of the appellant for a balance of $35.00 on his counterclaim after deducting excess rent paid by the respondent. The appellant was awarded costs on the counterclaim but his claim for possession was dismissed. The appellant appealed against the whole of this decision and the respondent cross-appealed from the orders in favour of the appellant. The following questions had to be decided on appeal namely (i) what was the rent legally payable prior to August 24, 1960, (ii) whether payments by way of rent lawfully due was in arrears (iii) whether payment of rates was a payment under section 4(1) of the said Ordinance and if so whether it was recoverable by the respondent under the Ordinance or was money paid to the use of the appellant.

Held: (1) there were no reasons for varying the findings of the trial judge that the standard rent was $50 and that the respondent had paid to the appellant $1,315 in excess of the lawful rent. Consequently the order in favour of the appellant for $35 must be set aside (as the parties agreed that the amount in arrears was only $1,125) and instead the respondent was entitled to recover $190 in respect of excess rent;

(2) it was difficult to see how rent lawfully due can be said to be in arrear when the tenant had paid specifically by way of rent more than was lawfully due. In any event this was a clear case where in equity there would be relief against forfeiture for non-payment of rent and accordingly no order for possession should be made;

(3) although the payment by a tenant of the landlord's annual assessment for rates is the giving of a valuable consideration additional to the rent and is a payment within the language of section 4(1) of the Control of Rent Ordinance the right of recovery is conferred only in respect of agreements made after the coming into force of the Control of Rent Ordinance, 1956, and consequently the respondent cannot recover in respect of payments made under the agreement made in 1942. In respect of the payment of rates made between January 31, 1948 and the coming into force of the 1956 Control of Rent Ordinance the respondent was committing a criminal offence and was in that respect *in pari delicto* with the appellant and consequently the respondent could not recover payments made during that period as money paid to the use of the appellant. However payments made subsequent to the coming into force of the 1956 Ordinance were recoverable by the respondent as money paid to the use of the appellant because the parties were not *in pari delicto* — there being no criminal offence on the part of the respondent other than as an accomplice or by way of abetment.

Cases referred to:—

(1) *Arunachalam Chettiar* v. *Kow Guan* [1963] M.L.J. 253, 254.

(2) *Sharp Brothers & Knight* v. *Ghant* [1917] 1 K.B. 771.

(3) *Elmdene Estates Ltd.* v. *White* [1960] A.C. 528.

(4) *Kiriri Cotton Co. Ltd.* v. *Dewani* [1960] A.C. 192.

(5) *Browning* v. *Morris* (1778) 2 Cowp. 790; 98 E.R. 1364.

(6) *Jacques* v. *Golightly* (1828) 2 Black.W. 1075; 96 E.R. 632.

FEDERAL COURT.

Lim Kean Chye for the appellants.

Mahinder Singh for the respondents.

Cur. Adv. Vult.

Wylie C.J. (Borneo): There has been much litigation between the appellant and respondent who are landlord and tenant respectively of premises situated at 43, Main Road, Parit. Following proceedings in the Sessions Court, Parit, and before the Parit Rent Assessment Board (with appeals to the High Court at Ipoh in both cases) the respondent commenced the present proceedings by writ in the High Court at Ipoh on 7th April, 1961. His claim (as amended) was for $3,600 excess rent paid to appellant and $2,281.20 for assessment paid on behalf of appellant from 1948 to 1960. The latter figure was subsequently amended to $2,469.20, which was accepted by both parties as the amount in dispute under this item. The appellant counterclaimed for $1,275 in respect of arrears of rent and also sought an order for possession, claiming that the respondent was in arrears in payment of the rent and that the tenancy had been duly terminated by notice to quit.

In the High Court, judgment was given in favour of the respondent for $2,469.20 on the claim in respect of assessment, together with costs on his claim, and in favour of the appellant for a balance of $35 on his counter-claim after deducting excess rent paid by the respondent. The appellant was also awarded costs on the counter-claim. His claim for possession was dismissed. The appellant appeals from the whole of this decision and the respondent has cross-appealed from the orders in favour of the appellant. Consequently, the questions in dispute which have been traversed by different tribunals five times since 1959, have now had a sixth airing before this court.

Rent receipts established that the respondent became a tenant of these premises in 1942 at a rent of $50 a month. The rent was increased to $60 in 1944 and in November 1949 to $75. The respondent also paid assessment rates from the time he went into occupation in 1942 up to 1960. In consequence of the proceedings before the Rent Assessment Board and the appeal therefrom, the maximum recoverable rent has been fixed at $75 as from 24th August, 1960.

The issues between the parties are substantially what rent was legally payable prior to 24th August, 1960, and whether the respondent may recover any part of the assessment rates paid by him. The answers to these two questions will determine the state of accounts between the two parties and thus determine their present position in respect of the tenancy.

Prior to 24th August, 1960, there was no order of a Rent Assessment Board fixing the maximum recoverable rent. Consequently, pursuant to section 6(1)(b) of the Control of Rent Ordinance, 1956, the maximum recoverable rent

from the date that this Ordinance came into force was the standard rent, with any increases authorised under that subsection. The question to be settled, therefore, is what was the standard rent of the premises. This is defined in section 2 as follows:—

"'standard rent' means the rent at which the premises were let on the twenty-fifth day of September, 1940; or, in the case of premises which were then unlet, unoccupied or unbuilt, the rent at which the premises were first let after the twenty-fifth day of September, 1940:

Provided that, where the date on which such premises were first let after the 25th day of September, 1940 was earlier than the 5th day of September, 1945, the Board may by Order determine the rent at which in its opinion the premises would have been let on the 25th day of September, 1940 if they had then been let, and the rent so determined shall thereupon be deemed to be the standard rent of the premises;".

In addition to the evidence referred to already, the appellant stated in evidence that the premises had been let to one Khoo Lee from 1935 to December 1941 and that the rent was $50 until 1939, when it was increased to $60. Some of this evidence as to the amount of the rent prior to 1942 was contradicted by the respondent in his evidence. The appellant said the premises were vacant from December 1941 until they were let to respondent. He also said that Khoo Lee's eldest son stayed on the premises and that he had subpoenaed this son as a witness. Counsel informed the Court that the son refused to accept a *subpoena* and that no warrant of arrest was sought because the witness might be hostile. In these circumstances, the appellant referred the High Court to the record of appeal from the decision of the Rent Assessment Board which suggested that a witness before the board had given evidence to a similar effect to that of the appellant to which I have just referred.

The High Court accepted the evidence of the respondent which, so far as concerned the rent paid by him, was in accordance with what the appellant said. The court apparently accepted the evidence that the premises had been let previously to respondent's becoming the tenant, but not the evidence which suggested that the rent in 1940 and 1941 might have been higher than $50. The judge found, on a balance of probabilities, that the standard rent was $50. I see no reason that would justify this court in upsetting this finding of fact, so far as concerns the evidence given in these proceedings.

The appellant further contended, both in the High Court and in this court, that the decision of the Rent Assessment Board, fixing the maximum recoverable rent at $75 was based on a standard rent of $60 and that this amounted to a decision on the standard rent which the High Court "had no power to go behind". One of the additional grounds of appeal was that the trial judge should have held that the matter of the standard rent was *res judicata*. The board could, and perhaps ought to, have arrived at its decision by first determining the standard rent and then adding any additions authorised by section 6(1)(b) of the Ordinance. There is, however, no reference to standard rent at all in the decision of the board, the formal order, or the grounds of judgment, all of which suggest that the board did not arrive at its decision in that manner at all. Apart, therefore, from the question whether any decision of the board as to standard rent could have been claimed to be *res judicata* in the present proceedings, in my judgment there has been no such decision, nor, having regard to the grounds of judgment given by the board, can one be implied in the circumstances disclosed by the record of its proceedings merely because the board exercised its function of fixing the rent under section 6(1)(a) of the Ordinance.

Consequently, I see no ground for varying the finding of the judge that the standard rent was originally $50, and I would uphold his finding that the respondent had paid to the appellant $1,315 in excess of the lawful rent.

It is now agreed between the parties that the amount of rent in arrear amounted to only $1,125. Consequently, the order in favour of the appellant for a balance of $35 must be set aside. Instead, the respondent is entitled to recover a balance of $190 in respect of excess rent.

Three grounds of appeal relate to the decision of the trial judge concerning the validity of notices to quit given by the appellant. These in turn concern the refusal of the judge to make an order for possession in favour of the appellant. The appellant sought an order for possession in his counter-claim and the sole ground put forward was that the rent was in arrears. The arrears amounted to only $1,125 and the tenant had paid by way of rent $1,315. Section 3(4) of the Ordinance gives the tenant a right to recover this excess. On balance, therefore, the landlord owed money to the tenant. However, on behalf of the appellant, it was pointed out that section 3(4) did not go as far as section 14 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (England) which specifically allows the tenant the alternative of setting off such an excess against any rent payable to the landlord. It was submitted, therefore, that in Malaya the tenant must pay the lawful rent for each period for which it is due, as it falls due, and his only remedy in regard to the excess is to proceed separately against the landlord to recover the amount overpaid. The effect of the English provision would be to allow the tenant to set off any excess for all purposes. Thus, if the tenant claimed the set-off, the landlord would have to allow for it in distraining for non-payment of the rent due in respect of a given

period. However, whatever the position in Malaya might be in such circumstances, that is not the nature of these proceedings. Here the appellant claims an order for possession because, he alleges, this is a case "where rent lawfully due has been in arrear for fourteen days or upwards", to quote the language of section 12(1)(a) of the Ordinance. It is difficult to see how rent lawfully due can be said to be in arrear in the present circumstances, when the tenant has paid specifically by way of rent more than is lawfully due. It seems irrelevant to the consideration of this question to enquire whether the payments have been made specifically in respect of any given period. The sole question seems to be whether or not the payments by way of rent lawfully due in respect of the tenancy have been insufficient, so that it can be said that rent lawfully due is in arrear, not whether any rent has been paid for a given period.

However, I find it unnecessary to consider this question in greater detail or to express final views on it because, even if the submission on behalf of the appellant were sound, this is a clear case where in equity there would be relief against forfeiture for non-payment of rent. For the withholding of rent due on a date when the tenant has paid more on account of rent than was owing up to that date, is obviously not an unreasonable course to follow. Moreover, the appellant in his evidence admitted that a large part of the rent claimed to be in arrear had been tendered as it fell due and the tender of payment refused by the appellant. As was pointed out by the Lord President (then Chief Justice of Malaya) in *Arunachalam Chettiar* v. *Kow Guan*,[1] the Control of Rent Ordinance, 1956, restricts the rights of landlords, but only modifies the general law relating to landlord and tenant within the limits of its own language. It is, generally speaking, legislation for the protection of tenants and there is nothing in its terms to suggest that the position of a tenant in regard to equitable relief from forfeiture is in any way affected by the legislation.

In my judgment, therefore, no order for possession should be made in any event, because these circumstances disclose a clear case for relief against forfeiture.

The judgment in respect of refund of assessment was attacked on the ground that there could be no refund under section 4(2) of the Ordinance because the payment of rates was not a payment within the language of section 4(1) under the circumstances disclosed in the evidence. As the judge had found that there was an agreement by the tenant to pay the rates, the amount paid could not be recovered on any other ground, it was submitted.

The appellant's submission was to the effect that section 4(1) referred only to payments in the nature of a premium in respect of the granting, renewal or continuance of a tenancy, and *Sharp Brothers & Knight* v. *Chant* [2] was referred to in support of that contention. It is sufficient to say that the language of the English legislation of 1915, then under consideration, is very different from that of section 4(1). On the other hand, more recent English legislation (the Landlord and Tenant (Rent Control) Act, 1949, sections 2 and 18) does not differ from section 4(1) in any respect that is material in the present proceedings except for the phrase "pecuniary consideration" instead of the phrase "valuable consideration" used in section 4(1). Notwithstanding the long list of authorities submitted on behalf of the appellant, the judicial interpretation already given to this more recent legislation appears to have escaped the notice of appellant's advisers. In *Elmdene Estates Ltd.* v. *White*,[3] several members of the House of Lords state clearly that the words "pecuniary consideration" must, in the context, be intended to include a payment that might not be described as a "premium or other like' sum", and the speeches draw attention to the wide range of transactions that are within the language of the enactment. The use of the phrase "valuable consideration" probably widens the effect of the Malayan provision slightly. In any event, I have no doubt that the payment by a tenant of the landlord's annual assessment for rates is clearly the giving of a valuable consideration in addition to the rent.

The refund of assessment paid is claimed in respect of payments for the years from 1948 to 1960. All these payments were made in pursuance of an agreement, as found by the judge in the High Court, and that agreement was made in 1942. The claim, as set out in the amended statement of claim, is for "assessment paid to the Land Office, Parit by the plaintiff on behalf of the defendant". In terms, this is merely a claim for money paid to the use of the defendant. In argument, however, it seemed to be assumed that this claim was made under section 4(2) of the 1956 Ordinance, which reads as follows:—

> "Where under an agreement made since the coming into force of this Ordinance, any premium or other like sum or valuable consideration has been paid, which, or the whole of which, could not lawfully be required under the provisions of this section, the amount of such premium, sum or consideration, or so much thereof as could not lawfully be required, shall be recoverable by the person by whom it has been paid."

The right of recovery is conferred only in respect of payments under an agreement made since the coming into force of the Ordinance. Consequently, it confers no right to recover paymants in respect of this agreement made in 1942.

It is still necessary to consider whether the

respondent could claim a refund for money paid to the use of the appellant.

These payments were equally prohibited under the previous Ordinance which came into force on 31st January, 1948, and was repealed by the 1956 Ordinance. The 1948 Ordinance, however, in addition to having in it no provision for recovery of payments, as is now contained in section 4(2) set out above, includes a further provision that has been omitted from the 1956 Ordinance. For section 4(1) of the earlier legislation, after prohibiting the demanding or receiving of a premium and other payments in terms identical with those in section 4(1) of the 1956 Ordinance, then has the following words, which are omitted in the new Ordinance:—

"and no person shall offer or make any such payment or offer or give such consideration".

Both sections contain a provision making the contravention of section 4(1) an offence punishable on conviction by fine or imprisonment or both.

It is clear, therefore, that, in respect of the payments made between 31st January, 1948, and the coming into force of the 1956 Ordinance, the respondent was committing an offence and was in this respect *in pari delicto* with the appellant. He cannot claim these payments without pleading the facts constituting his own criminal offence.

In *Kiriri Cotton Co. Ltd.* v. *Dewani*,[4] the Judicial Committee held that the tenant, in paying a premium prohibited by the Rent Restriction Ordinance of Uganda, was not *in pari delicto* with the landlord. Undoubtedly, Lord Denning emphasises the point that this legislation is enacted for the benefit of tenants and that, as in that case, a tenant may be compelled to pay an illegal premium in order to secure possession. However, there is no evidence that this happened in the instant case. Indeed, in one part of his evidence the respondent implies that he was in possession before he agreed to pay assessment. In 1948, when section 4(1) of the Control of Rent Ordinance, 1948 was enacted, the respondent did not need to pay this amount to secure, or to retain, possession. Nor could he be deprived of possession except upon one of the grounds set out in section 13.

The important distinction, however, is that the Uganda legislation makes it an offence if any person "asks for, solicits or receives" a premium. No penalty is imposed on the person who pays the premium, as is provided for in section 4 of the Control of Rent Ordinance, 1948. Hard cases may make bad law and, even giving full consideration to the fact that this legislation was enacted to protect tenants, I consider more harm in the future may well result from a decision that, because of that factor, a person might be permitted to recover money paid over by him in the course of a transaction that was the commission by him of a criminal offence. While the 1948 legislation was in force, in my judgment, the parties were *in pari delicto* because both were committing a criminal offence for which both were equally punishable. Consequently, the respondent cannot recover payments made during that period.

A claim in respect of most of the payments made during that period for money paid to the use of the appellant is presumably statute-barred. However, this was not specifically pleaded, probably because attention was directed to section 4(2) of the Control of Rent Ordinance, 1956, as the basis of the claim.

So far as concern payments made since the 1956 Ordinance came into force, there was no criminal offence on the part of the respondent other than as an accomplice or by way of abetment, for the words quoted above from section 4(1) of the 1948 Ordinance were omitted from the new section 4(1). In *Dewani's* case, although emphasis was placed on the fact that the tenant had to pay the premium in order to secure the premises, the general proposition is stated by Lord Denning at page 204 in these terms:—

"If there is something more in addition to a mistake of law — if there is something in the defendant's conduct which shows that, of the two of them, he is the one primarily responsible for the mistake — then it may be recovered back. Thus, if as between the two of them the duty of observing the law is placed on the shoulders of the one rather than the other — it being imposed on him specially for the protection of the other — then they are not *in pari delicto* and the money can be recovered back; see *Browning* v. *Morris*, by Lord Mansfield."

In *Browning* v. *Morris*,[5] Lord Mansfield explains the principle and illustrates it in terms which make it clear that, although the Privy Council emphasised the necessity to pay the premium in order to secure possession, the absence of that factor, as in the present case, would not affect the application of the principle. For Lord Mansfield illustrates the principle by reference to *Jacques* v. *Golightly* [6] which concerned lottery payments, where the money had been paid voluntarily without there being any coercive circumstances compelling the claimant to make the payment. Consequently, the general proposition I have quoted is applicable to the payments made subsequent to the coming into force of the 1956 Ordinance, and, in my judgment, the respondent is entitled to recover this amount as money paid to the use of the appellant.

In coming to this conclusion, I have considered the amendments in the legislation made from time to time. The circumstance that, in 1956, the legislature while repealing the provision which created it an express offence to make this kind of payment, conferred a specific right to recover any such payments only in respect of

future agreements, could suggest that the intention of the legislature might be that payments made under agreements already existing are not to be recoverable in any circumstances. However, I do not take the view that any implied intention of the legislature as to the effect of the legislation, is sufficient to outweigh the application of the common law principle in all circumstances. Its effect is to be limited, in my judgment, to showing the intention that there is to be no statutory right to recover and, while that is a consideration to be taken into account in applying the common law principle, it does not so far outweigh the other considerations so clearly expressed by Lord Mansfield as to lead to the conclusion that the parties in the present case must be treated as if they were *in pari delicto*.

I would therefore allow both the appeal and the cross-appeal in part and set aside the judgment of the court below except in regard to the dismissal of the claim for possession. I would substitute judgment in favour of the respondent for a balance of $190 in respect of excess rent paid and for the amount paid by way of assessment since the coming into force of the 1956 Ordinance. ,

As both parties have succeeded in part, I would order each party to pay his own costs in this court. In the court below the respondent should have his costs based on the amount for which he now has judgment.

Thomson L.P. and **Tan Ah Tah F.J.** concurred.

Appeal and cross-appeal allowed in part. Each party to pay his own costs.

Solicitors: *Peh Swee Chin; Maxwell, Kenion, Cowdy & Jones.*

LIM CHUAN CHENG v. THE BORNEO CO. LTD.

[F.C. (Wylie C.J. (Borneo), Wee Chong Jin C.J. (Singapore) & Tan Ah Tah F.J.) June 9, 1964]

[Kuching — Federal Court Civil Appeal No. 99 of 1963]

Master and servant — Oral contract of service — Repeated and wilful disobedience of superior's orders by chief cashier — Misconduct — Repudiation of contract of service — Right of summary dismissal not exercised — Dismissal by payment of one month's salary in lieu of notice — Whether condonation — Whether notice reasonable — Pay in lieu of leave not taken — Whether claimable.

Damages — Dismissal by payment of one month's salary in lieu of notice — Claim for specific sum — Whether maintainable.

The appellant entered the employment of the respondents on July 1, 1935. He was first employed as an accounts clerk, became a cashier in 1938 and in 1962 held the post of chief cashier at the salary of $550 per month in the respondents' branch office in Sibu.

On January 12, 1962 the appellant was requested by one S, the imports manager and the appellant's superior, to pay out monies to masons employed by a firm for which a payment voucher had already been made out and signed. The appellant refused to pay at which S ordered him to pay. This order was not obeyed and S told the appellant that if he did not make the payments he would be reported to the branch manager. The appellant still refused to pay and he was reported to the branch manager who, after calling in the appellant, instructed the assistant cashier to make out the payments.

On January 13, 1962, the appellant's employment was terminated by a letter signed by the branch manager which stated, *inter alia*, that at the close of business on that day, the appellant could draw his salary to date plus one month's salary in lieu of notice. The appellant did not draw the salary to date for that month nor the month's salary in lieu of notice but wrote a letter on the same day asking for reasonable compensation for loss of office. After further correspondence, the branch manager wrote a letter on February 24, 1962 offering to pay the appellant 3 months' salary in recognition of his long service to the respondents. The appellant did not accept the offer and commenced an action for damages for wrongful dismissal and 13 weeks leave-pay in lieu of leave not taken. The trial judge in dismissing the appellant's claims held that (i) the respondents were entitled to dismiss the appellant summarily because of the wilful and repeated disobedience by the appellant of a superior's reasonable and lawful order; (ii) failure by the respondents to dismiss the appellant did not amount to a condonation of the appellant's misconduct; and (iii) the respondents were entitled to terminate the appellant's services on notice, on giving salary in lieu of notice, of any notice, and that they were within their rights in terminating the appellant's services on giving one month's salary in lieu of notice. On appeal it was argued that the trial judge was in error when he found that the appellant had been guilty of misconduct which warranted summary dismissal; and that by offering the appellant one month's salary in lieu of notice the respondents had condoned the offence by the appellant.

Held: (1) there were no reasons why the court should differ from the view of the facts taken by the learned trial judge;

(2) the learned trial judge was correct on his decision that the conduct of the appellant warranted summary dismissal;

(3) by offering the appellant 13 days salary together with one month's salary in lieu of notice the respondents were not condoning the conduct of the appellant.

Cases referred to:—

(1) *Laws* v. *London Chronicle (Indicator Newspapers) Ltd.* [1959] 1 W.L.R. 692.

(2) *The Manager, Scudai Estate, Johore Bahru* v. *Narayanan* [1960] M.L.J. 162.

(3) *Jupiter General Insurance Co. Ltd.* v. *Ardeshir Bomanji Shroff* [1937] 3 All E.R. at p. 67.

(4) *Hurst* v. *The Sheffield Corporation* (1916) 85 L.J. K.B.

In the court below the following judgment was delivered:

McGilligan J.: The plaintiff's claim is, as a former employee of the defendant company, for damages for wrongful dismissal, and for 13 weeks leave-pay in lieu of leave not taken.